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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1959

No. 901

ALFRED G. SECKLER, Trustee in Bankruptcy,
PETITIONER,

v.

J. I. CASE COMPANY, a corporation,
Respondent.

In the Matter of

LELAND WADE MORRISON, Bankrupt.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

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OPINION BELOW

The opinion of the Supreme Court of the State of Colorado (per Knauss, C. J.) (appended hereto) is reported at 348 P.(2) 368.

JURISDICTION

The judgment of the Supreme Court of the State of Colorado was entered on January 11, 1960, and became

final upon the denial of the Petition for Rehearing on February 1, 1960, R. pages 13 and 19. Jurisdiction is conferred on this Court to review the judgment of the Supreme Court of the State of Colorado by the following statutory provision:

28 U.S.C. Section 1257:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

QUESTION PRESENTED

The question presented for review is whether Section 70 sub. c of the Bankruptcy Act, 11 U.S.C. Section 110, places the Trustee in Bankruptcy in the position of a lien creditor, or is the position of the Trustee in Bankruptcy such that he can assert no greater rights than could the bankrupt, and stands only in the shoes of the bankrupt, as held by the Court below.

STATUTES INVOLVED

The statutory provisions which this case involves are as follows:

11 U.S.C. Sec. 110 (c):

"The trustee may have the benefit of all defenses available to the bankrupt as against third persons, in-

cluding statutes of limitation, statutes of frauds, usury, and other personal defenses, and a waiver of any such defense by the bankrupt after bankruptcy shall not bind the trustee. The trustee, as to all property, whether or not coming into possession or control of the court, upon which a creditor of the bankrupt could have obtained a lien by legal or equitable proceedings at the date of bankruptcy, shall be deemed vested as of such date with all the rights, remedies, and powers of a creditor then holding a lien thereon by such proceedings, whether or not such a creditor actually exists."

FACTS

Facts material to the question presented are as follows:

For several years prior to September, 1956, one Leland Wade Morrison was a dealer, in the City of Sterling, Colo., for the J. I. Case Company, a Wisconsin corporation manufacturing farm machinery and equipment. This Dealer's Contract, Exhibit D, provided as follows: (fol. 124)

"18. The goods purchased under this agreement are for resale at retail and until full payment has been made therefor to Company in cash, title to all of such goods, together with the right of possession in the event of default, shall be and remain in Company, and the proceeds of goods so sold, whether in cash or otherwise, shall be deemed the property of Company and held in trust for it subject to its order. Dealer authorizes and empowers Company at any time to possess itself of the proceeds of any goods resold and upon its request agrees to execute all necessary en-

dorsements and assignments to fully vest Company with all such proceeds."

"26. Dealer agrees that in the event any indebtedness of Dealer under this contract, whether book account or evidenced by note or in any form, shall not be paid when due, or Dealer shall part with possession of said goods, voluntarily, in a manner not authorized herein, or shall fail to comply with any of the terms hereof, then Company shall be entitled, at its option, to declare all indebtedness of Dealer to it immediately due and payable and shall be entitled to the immediate possession of all goods purchased under this contract and remaining unsold and for which the Company has not received payment in full, and may, without notice and without process of law, take possession of and remove same."

"As to any goods so repossessed, Dealer further agrees that the Company may avail itself of all rights and remedies conferred by law."

On March 8, 1956, Morrison, being indebted to the Case Company in excess of $42,000, on that date executed a Dealer's Contract and Order for Case machinery and implements, Exhibit A, and a note and chattel and crop mortgage, Exhibit B, to secure the payment of his then open account with the Case Company. (fol. 1228)

On September 24, 1956, Morrison was advised in writing that his Dealer's Contract was canceled and as of that date the Company would proceed to take possession of all the machinery, implements and other property then on hand, in accordance with the terms of the Dealer's Contract, Exhibit D. (fol. 149)

On the following day, and on September 25, 1956, the

Company rented a lot and started the removal of some of the machinery and equipment from Morrison's storage lot. (fol. 155)

On September 28, 1956, and while the J. I. Case Company was still in the process of repossessing its property claimed under its Contract, one Crow instituted a civil action in the District Court of Logan County, Colorado, and caused Alfred G. Seckler to be appointed Receiver of Morrison's business and assets. On the same date, Seckler qualified as such Receiver and took possession of Morrison's business and all of the assets, including the property which Case had removed from Morrison's premises. (fol. 461-471)

Seckler posted a notice at all places where any of the property was stored, including the lot which Case had rented, to the effect that said property was in his possession as such Receiver, and that nothing should be removed. (fol. 471)

Thereafter, and on the 11th day of October, 1956, Morrison filed his voluntary Petition in Bankruptcy. On the same date, but subsequent to the time Morrison filed his voluntary Petition in Bankruptcy, Case instituted the present action in replevin, against Seckler, claiming ownership and the right to possession of the property involved. A writ of Replevin was issued and the sheriff assumed custody of the property. (fol. 6-24)

Seckler was appointed Trustee for the Estate of Leland Wade Morrison, a bankrupt, and by the direction of the Referee in Bankruptcy, intervened in the present action. Seckler filed his Answer, denying the ownership and right of Case to the possession of the property in question, asserting that he, as Trustee in Bankruptcy for Leland Wade Morrison, was entitled to hold possession of the

property as assets of the Estate of Leland Wade Morrison. (fol. 28-41)

Upon trial of the case, the Lower Court held that the property which Case had removed to the lot which it had rented was in the actual physical possession of Case prior to any claim being asserted by Seckler, either as Receiver or as Trustee in Bankruptcy; that it was immaterial whether Case took possession of the property under the terms of the Dealer's Contract, Exhibit D, or under the chattel mortgage given on March 8, 1956, Exhibits A and B. That by reason of having taken such possession, they were entitled to recover from the Trustee in Bankruptcy, since this was not a question of voidable preference either as an issue in the replevin case, or the evidence; the Lower Court obviously applying the doctrine that an otherwise voidable security instrument was perfected as of the date of the instrument by the taking of possession by the mortgagee. (fol. 75-83)

Upon appeal, the Supreme Court of the State of Colorado sustained the Lower Court, holding: (R. page 12)

> "Morrison at no time acquired title to any of the property involved; the title at all times being in Case under the dealer's contract. No third person is here claiming to have acquired rights thereto upon the faith of Morrison's possession and apparent ownership, and such possession and apparent ownership having evaporated upon Case's reclaiming and removing the property, the receiver or the trustee in bankruptcy can assert no greater rights than could Morrison; they stand in his shoes. *Lewin v. Telluride Iron Works Co.*, 272 Fed. 590; *Bogdon v. Fort*, 75 Colo. 231; 225 Pac. 247."

ARGUMENT

The decision of the Supreme Court of the State of Colorado recognizes that a lien creditor would in the case at bar be in a position to contest the claim of Case, stating:

> "No third person is here claiming to have acquired rights thereto upon the faith of Morrison's possession and apparent ownership . . ."

and then holds that the Trustee in Bankruptcy is not in the position of a lien creditor stating:

> ". . . the receiver or the trustee in bankruptcy can assert no greater rights than could Morrison; they stand in his shoes."

This decision has the effect of invalidating Section 70 sub. c of the Bankruptcy Act, 11 U.S.C. 110 sub. c, and is in conflict with the decisions of the Federal Courts interpreting this same section of the Bankruptcy Act.

In the case of *In re Urban, Charnesky v. Urban et al*, 136 F. 2d 296 (Circuit Court of Appeals, Seventh Circuit, June 10, 1943), the Court, in construing the rights and powers of the Trustee in Bankruptcy said:

> "Whatever may be the rights as between creditors and the mortgagee, they can have no application as to a trustee in bankruptcy, who does not merely stand in the shoes of a bankrupt. He is, in varying degrees, the statutory representative of all the parties who may have some interest in the bankrupt's estate. *In re Farmers' Co-operative Co., D.C.*, 202 F. 1008. He has all of the rights the bankrupt had, and in addition thereto has all of the rights of a lien creditor. He is in the position of the ideal creditor, *Sparks v. Kuss*, 195 Wis. 378, 216 N.W. 929; 218 N.W. 208. . . ."

There can be no question but that the statement of the Lower Court, which is as follows:

> "... the receiver or the trustee in bankruptcy can assert no greater rights than could Morrison;" (the bankrupt) "they stand in his shoes."

is in direct conflict with the case of *In re. Urban, Charnesky v. Urban et al*, supra.

The question of the powers and rights of the Trustee in Bankruptcy usually arises where the Trustee in Bankruptcy is attempting to set aside a transfer. This case, however, is the converse; here the claimant is attempting to recover the property from the Trustee on the basis of having perfected otherwise imperfect liens by taking possession of the property sixteen days before bankruptcy.

A Federal case squarely in point on this subject is the case of *The Exchange National Bank of Colorado Springs v. Hough*, 258 F. 2d 785, (U.S. Court of Appeals Tenth Circuit, Aug. 11, 1958). This case involves a question of a lien holder attempting to recover possession from the Trustee in Bankruptcy, in which the Trustee defends on the grounds the lien is void as to the Trustee in Bankruptcy, and the property sought to be recovered were assets of the bankrupt estate.

The Court, in considering powers and rights of the Trustee in Bankruptcy said:

> "(3) Under the Colorado decisions the 'creditors and third persons' who are protected by the general chattel mortgage statute are not general creditors but only such creditors or persons as have acquired enforceable liens by execution or writ of attachment, or by contract, during the period of time that the mortgaged property remains in possession of the mortgagor. The

trustee comes within the protected class by virtue of sec. 70, sub. c of the Bankruptcy Act. His rights attach as of the date of bankruptcy. Date of bankruptcy is defined as the date when the petition was filed. In the case at bar the petition was filed on October 11, 1956. The chattels were then in possession of the mortgagor."

There can be no reconciling of the holding of the Supreme Court of the State of Colorado and the language used therein and the case of *In re Urban, Charnesky v. Urban et al*, supra. Likewise, there can be no reconciling of the language used in *The Exchange National Bank of Colorado Springs v. Hough*, supra, and the decision of the Supreme Court of the State of Colorado in the case at bar. And yet, each of these cases was applying the Colorado lien law to a trustee in bankruptcy. The holding of the Supreme Court of the State of Colorado is absolutely opposite and contrary to the holding of the Circuit Court of Appeals for the Tenth Circuit.

The Lower Court adopts as the applicable law the decisions of the cases of *Lewin v. Telluride Iron Works Co.*, 272 Fed. 590, and *Bogdon v. Fort*, 75 Colo. 231, 223 Pac. 247. Neither of these cases are in point for the reason that there was presented an entirely different factual situation, and moreover, both of these cases were decided prior to the enactment of the Chandler Act of 1938, which enacted Section 60 sub. a of the Bankruptcy Act, which section has the effect of destroying the doctrine of relation back on the perfection of an otherwise imperfect lien.

In each of the two cases cited by the Lower Court, the Trustee was seeking to gain either possession of, or the value of the property, which was in the hands of the creditor. In the case at bar, it is a creditor seeking to recover possession of property from the Trustee in Bankruptcy.

This is a material distinction as was pointed out in the case of *Lewin v. Telluride Iron Works Co.*, supra.

> "When the petition was filed the property had been seized and sold by the sheriff under an execution against the bankrupt and was in the possession and control of the Telluride Company or its successor in interest, held by them subject to the lien of the lessor of the mining claim. The trustee never reduced the property to possession but elected to sue the Telluride Company for its value. . . ."

If the decision below is permitted to stand, each State Court will then be at liberty to write its own rules of bankruptcy and ignore the clear language of the National Bankruptcy Act, and there will be, as in the instant case, a conflict between the State Court and the Federal Courts in the interpretation given to a specific section of the Bankruptcy Act.

The policy of uniformity in the field of bankruptcy is directed by Article I Section 8 of the Constitution of the United States which provides:

> "The Congress shall have power . . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States;"

If each state is permitted to place an independent or different interpretation upon the Bankruptcy Act in conflict with the Act and contrary to the holdings of the Federal Courts, as attempted here, then the Bankruptcy Act will be greatly weakened or completely nullified.

Respectfully submitted,

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APPENDIX I

No. 18476

ALFRED G. SECKLER, Trustee in Bankruptcy for the Estate of Leland Wade Morrisson, bankrupt, Plaintiff in Error. v. J. I. CASE COMPANY, a corporation, Defendant in Error.	Error to the District Court of Logan County Honorable Francis D. Shallenberger, Judge.

EN BANC JUDGMENT AFFIRMED

(January 11, 1960.)

Messrs. Kreager & Sublett, Attorneys for Plaintiff in Error.

Messrs. Sandhouse & Sandhouse, Attorneys for Defendant in Error.

Mr. Chief Justice KNAUSS delivered the opinion of the Court.

The parties are here in reverse order of their appearance in the trial court and we will so refer to them, or by name.

Plaintiff J. I. Case Company, a Wisconsin corporation qualified to do business in Colorado, is a manufacturer of farming machinery and equipment. For several years prior to September, 1956, one Morrison was its dealer in the City of Sterling, Colorado. The arrangement between the company and Morrison was based upon a dealer's con-

tract, under the terms of which Case delivered items of machinery, parts and equipment to Morrison on his order, retaining the title thereto until sold and the invoice price remitted to the Company. It provides that in the event any indebtedness of the dealer to the company is not paid when due, or upon failure to comply with any of the terms or conditions of the contract, the company shall be entitled to the immediate possession of all property delivered under the contract and remaining unsold and for which the company had not received payment in full.

On March 8, 1956, Morrison was indebted to the Company in excess of $9,000.00 and on that day executed a note and chattel mortgage to the company covering the items of machinery, implements and parts then on hand. On September 24, 1956, Morrison was advised in writing that his dealer's contract was cancelled as of that date and that the company would proceed to take possession of all machinery, implements and other property then on hand in accordance with the terms of the contract. This it proceeded to do the following day with the assistance, or at least acquiescence, of Morrison. The property was removed from Morrison's establishment to a lot some distance away which the company had rented for that purpose. Not all the property then on hand was removed, and that which remained on the Morrison premises is not involved in this action. On September 28, 1956, in a civil action brought by one Crow, defendant Seckler was appointed receiver of Morrison's business and made claim to the property that Case had removed from the premises. He posted a notice on the gateway of the lot to which it had been removed, to the effect that it was in his possession as receiver and nothing should be removed.

Following this action of Seckler, Case brought the present action in replevin against Seckler as defendant.

claiming ownership and the right to possession of the property involved. Writ of replevin was issued and the sheriff, according to his return, assumed custody of the property. On October 11th following; Morrison was adjudicated a bankrupt on his voluntary petition and defendant Seckler was appointed trustee of the bankrupt's estate and as such intervened and filed an answer in this action. He denied the right of Case to possession of the property. Other than the trustee in bankruptcy, no rights or claims of any third party are involved.

Upon trial the court found and ruled that the property described in the complaint was in the actual physical possession of Case prior to any claim being asserted thereto by Seckler as receiver, or as trustee in bankruptcy; that it was immaterial whether the plaintiff took possession of the property under the terms of the dealer's contract or under the chattel mortgage given on March 8th, and that the question of voidable preference under the bankruptcy act was not an issue in the case under either the pleadings or the evidence.

Judgment for the plaintiff followed and Seckler seeks reversal by writ of error.

Four points are set out upon which it is contended the court erred. Summarized they are: 1. That Case's possession was not open, notorious, exclusive and unequivocal. 2. That the chattel mortgage of March 8th is void as to Seckler. 3. That Case did not purport to foreclose the chattel mortgage, and 4. That Case's possession of the property within four months of the adjudication in bankruptcy in payment of an antecedent debt is void under the Bankruptcy Act.

As we view the record before us none of the contentions is valid. Morrison at no time acquired title to any

of the property involved; the title at all times being in Case under the dealer's contract. No third person is here claiming to have acquired rights thereto upon the faith of Morrison's possession and apparent ownership, and such possession and apparent ownership having evaporated upon Case's reclaiming and removing the property, the receiver or the trustee in bankruptcy can assert no greater rights than could Morrison; they stand in his shoes. *Levin v. Telluride Iron Works Co.*, 272 Fed. 590; *Bogdon v. Fort*, 75 Colo. 231, 225 Pac. 247.

Concluding, as we do, that the trial court correctly resolved the issue before it, the judgment is affirmed.
MR. JUSTICE HALL not participating.